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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. [redacted] 98

MATILDA ROUMANIA WALKER, *Petitioner*

v.

EDITH CECILIA FOSTER, ET AL., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

MATILDA ROUMANIA WALKER and
JAMES WALKER
2710 O Street, N. W.
Washington, D. C., 20007
Pro Se

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

MATILDA ROUMANIA WALKER, *Petitioner*

v.

EDITH CECILIA FOSTER, ET AL., *Respondents*

MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF CERTIORARI AND REQUEST THAT HUSBAND ALSO SPEAK FOR HER AND/OR REPRESENT HER AND/OR ACT AS ATTORNEY-IN-FACT FOR HER

Petitioner Matilda Roumania Walker hereby begs leave to file this Petition for a Writ of Certiorari and humbly requests that her husband James Walker also speak for her and/or represent her and/or act as attorney-in-fact for her on this and any and all causes.

Respectfully submitted,

MATILDA ROUMANIA WALKER and
JAMES WALKER

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

MATILDA ROUMANIA WALKER, 2710 O Street, N. W., Washington, D. C., *Petitioner*

v.

EDITH CECILIA FOSTER, 1636 15th Street, N. W., Washington, D. C.,

RUTH MARGARET PETERS, 1838 Belmont Road, N. W., Washington, D. C.,

MARY ALICE BRANCH, 4435 Texas Avenue, S. E., Washington, D. C.,

MARGARET VERA PETERS, 2719 O Street, N. W., Washington, D. C.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

Jurisdiction for this cause is invoked under Articles in addition to and Amendments to the Constitution of the United States: Article VII; and Article XIV, Section 1 (. . . . . deprived of property without due process of law); Title 28, Section 1254(1) United States Code, and the general equity powers of the Court.

STATEMENT OF CASE

The case was filed by Respondent Edith Cecilia Foster in the District Court for the District of Columbia October 1, 1964. On October 19, 1964, the Petitioner answered the Complaint and made a demand for a jury trial. On October 30, 1964, the Respondent made a motion for a Summary Judgment. The Petitioner filed objections to the motion for the Summary Judgment November 8, 1964, reiterating the demand for a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure. The hearing for the Respondent motion on the Summary Judgment was held November 23, 1964 before the Honorable Judge Tamm. He sustained the Summary Judgment, Order being signed December 2, 1964. On December 14, 1964, the Petitioner filed the Notice of Appeal. On January 14, 1965 the case was docketed in the United States Court of Appeal. On March 11, 1965, the appeal was dismissed. On March 30, 1965, a motion was granted to the Petitioner for transmitting the record to the Supreme Court.

STATEMENT OF POINTS

1. To be denied a jury trial is a violation of the Petitioner's Constitutional Right. Federal Rule of Civil Procedure No. 38; 14th Amendment to the Constitution (. . . . due process of law).

2. The mother, Fannie Peters had ownership in the property; therefore her expressed wishes that it remain always in the family must prevail.

3. The Petitioner having represented herself in Civil Actions 1017-68 and 2813-61, should not be charged for any Attorney fees incurred by the Respondents for the same representation.

4. It is a right of the Petitioner to occupy the property without paying rent. *Allan* v. *Jones* (1926), 12 F 2nd 186, 56 App. D.C. 245.

SUMMARY OF ARGUMENT

When the Honorable Judge Tamm asked what the issues were in the case, he was informed to this effect:

1. Self representation. (being forced to pay attorney fees for a representation that you are making yourself is a denial of self representation).

2. Constitutional right of a jury trial.

3. Prior demand of a jury trial vacates or estops any subsequent Order.

4. Determination of mother's wish—estate not probated after mother's death.

5. Determination of contribution to mother. (Funeral expenses, medical care, living expenses).

6. Usage of house for storage by Petitioners, possession of key to come and go at will.

7. Estopped from initiating this action prior to seeking a voluntary partition.

ARGUMENT

1. Should There be a Jury Trial?

The answer is unequivocally yes. The Constitution of the United States is unmistakably clear that a jury trial remains inviolate. As the Respondents constantly raise the issues about paying rent and attorney fees, the amount of money far exceeds the amount imposed by the Constitution for a jury trial. The Petitioner has paid an "improper fractional" part of the taxes. The Petitioner has made permitted repairs on the property.

2. Did the Mother Have Ownership in the Property?

The mother, Fannie Peters had ownership in the property, having survived her husband by fifteen years who with his wife had occupied the property for twenty-five years; thereby, giving Fannie, the loving wife and devoted mother an occupancy for at least forty (40) years.

To say that the wife had only a widow's interest in the property would imply that the children could inherit only the right to occupy the property as the widow had the right, for life. Moreover, the widow had more than a dower right; she had ownership per se; therefore, with her expressed wish that the property remain in the family always, also prevents a partition of the property.

It is evident then that the only way the property may be sold is when there is only a sole surviving heir. Therefore the property cannot be partitioned at the present time. Moreover, if the property could be partitioned at the present time, the action of the Respondents is estopped for their failure to seek a voluntary partition at first.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1964

No. 98

MATILDA ROUMANIA WALKER, *Petitioner*

v.

EDITH CECILIA FOSTER, ET AL., *Respondents*

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

JOHN JOSEPH LEAHY
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Attorney for Respondents

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 1119

MATILDA ROUMANIA WALKER, *Petitioner*

v.

EDITH CECILIA FOSTER, ET AL., *Respondents*

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

Rule 19 of the *Rules of The Supreme Court of the United States* makes it clear that review on a writ of certiorari is not a matter of right, but of sound judicial discretion. With this in mind, Respondents contend that the Court should not exercise its jurisdiction in this matter for the reasons hereinafter stated:

STATEMENT OF THE CASE

This action originated in the United States District Court for the District of Columbia on October 1, 1964,

when the Respondent herein, Edith Cecilia Foster, filed a partition suit against her sister, the Petitioner, Matilda Roumania Walker, two other sisters, Mary Alice Branch and Margaret Vera Peters, and her sister-in-law, Ruth Margaret Peters.

All those defendants, save the Petitioner above, filed answers to the said action and joined the Petitioner in praying the court for the granting of the relief sought which was a partitioning and sale of a parcel of realty in the District of Columbia which the said parties owned as tenants in common.

This improved property had been inherited by the five party litigants from their father, George Peters who died intestate in 1937. The cotenancy of a group of cousins was eliminated through an adverse possession decree that was entered by the same court on March 27, 1961, in Civil Action No. 1017-58.

Following a hearing, an order for a partitioning was entered by the said Court on December 2, 1964, in Civil Action No. 2419-64, in favor of the Respondents.

The Petitioner herein filed a notice of appeal on December 14, 1964, and the case was docketed in the U. S. Court of Appeals for the District of Columbia Circuit on January 14, 1965, No. 19,130. On March 11, 1965, the appeal was dismissed by per curiam order. The mandate of the said Court of Appeals was issued on April 21, 1965.

OPPOSITION TO PETITIONER'S STATEMENT OF POINTS

1. A suit for partition and sale of realty is an equitable action and affords no right to a jury trial.

2. Although alleged in her Answer to the partitioning suit, the Petitioner herein failed to even offer any proof that Fannie Peters "had ownership in the property."

3. The alleged granting of attorney's fees is not germane to this case; none having been granted or even requested.

4. Assuming that the Petitioner has a right to occupy the property without paying rent, this will not prevent a judicial partitioning of the property.

ARGUMENT

1. The denial of a jury trial was not in violation of the Petitioner's constitutional rights. The right to a jury trial guaranteed by the Seventh Amendment to the United States Constitution remains inviolate only where it was accorded to an individual in a suit at common law prior to 1789. *Amendment Seven to the United States Constitution.* Moreover a suit for partition and sale of real property is an equitable action and affords no right to a trial by jury. *Green* v. *Fiske,* 103 U.S. 518.

2. On the death of their father, George Peters, in 1937, the mother of the parties, Fannie Peters, acquired only a dower interest in the property. On March 18, 1953, she died intestate. Title to the fee therefore did not pass through her. Any wishes expressed by her regarding the property (which have never been adduced by the Petitioner) would not prevent the respondents from exercising their right to alienate the property with the aid of the Court, which they obtained.

3. The attorneys fees alluded to by the Petitioner were granted in the administration of the estate of George Francis Peters, late husband of Ruth Margaret Peters, one of the Respondents herein, in Administration No. 104,605. This order was entered on 25 October 1963 and was not appealed. The matter therefore is not in issue here.

4. Petitioner now asserts that the Respondents are estopped from seeking partitioning for their alleged "failure to seek a voluntary partition at first." Not only is this untrue, but, since this was not raised at trial, (or even in the appeal below) it is not an issue.

5. Finally, Petitioner claims that she and her family have a right to occupy the premises without having to pay rent. Why she feels entitled to occupy premises in which she has a mere one-fifth interest without making a nominal contribution to the other non-occupancy owners, she does not say.

However, this too is not an issue, for the order of 25 October 1963 requiring her and one of the Respondents, between them, to contribute $15 a month to each of the other three cotenants having a one-fifth interest in this $27,500 property for the exclusive habitation of the premises was not appealed from and constitutes another belated assertion which is not germane.

Even if the point were timely raised it would not deprive the Respondents of their right to partitioning. *Willard* v. *Willard*, 145 U.S. 116.

CONCLUSION

Because in this purely equitable action no right to a trial by jury is guaranteed or appropriate, no encumbrance to the Respondents' right of alienation has been shown, and the orders of the trial court 18 months ago regarding attorney's fees and "rent" were not appealed, and because the question of the Respondents not first seeking a voluntary partitioning is raised herein for the first time, and there is no constitutional question involved, the application of the Petitioner for a writ of certiorari should be dismissed.

Respectfully submitted,

JOHN JOSEPH LEAHY
Attorney for Respondents